

05-18-00567-CV

In the Fifth Court of Appeals
Dallas, Texas

FILED IN
5th COURT OF APPEALS
DALLAS, TEXAS

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DARLENE C. AMRHEIN,
Appellant

LISA MATZ
Clerk

v.

**ATTORNEY LENNIE F. BOLLINGER, AND WORMINGTON &
BOLLINGER LAW FIRM,**
Appellees

**On Appeal from County Court at Law No. 6, Collin County, Texas
Cause Number 006-02654-2017**

APPELLEES' RESPONSE TO APPELLANT'S NOTICE OF BANKRUPTCY

Appellees Lennie F. Bollinger, and Wormington & Bollinger Law Firm (collectively, "Bollinger") present this Response to Appellant's Notice of Bankruptcy, and state as follows:

I. PROCEDURAL HISTORY

This appeal arises from the trial court's order dismissing a lawsuit Amrhein filed against Bollinger because she failed to post security after being declared a vexatious litigant. More specifically, on April 5, 2018, the trial court entered its Order Granting Defendants' Motion to Declare Plaintiff a Vexatious Litigant and to Require Security. (CR 1934-1935). Pursuant to that April 5, 2018 Order, Amrhein was required to provide security by obtaining a bond in the amount of \$160,000.00 no later than May 5, 2018 at 5:00 p.m. (CR 1935). Amrhein did not provide security

as required by the April 5, 2018 Order. (CR 2082). Accordingly, on May 8, 2018, the trial court entered an Order dismissing Amrhein's claims with prejudice pursuant to Texas Civil Practice & Remedies Code § 11.056, which states that a court shall dismiss a litigation as to a moving defendant if a plaintiff ordered to furnish security does not furnish security within the time limit set by the order. (CR 2082). Amrhein appealed shortly thereafter. (CR 2090).

After making multiple requests to stay the appeal, and on February 6, 2019, Amrhein filed her Amended Appellant's Brief. On March 8, 2019, Bollinger filed his Appellees' Brief. Although Amrhein attempted to file a Reply Brief, Amrhein's Reply Brief exceeded the word count limitations. Accordingly, on April 1, 2019, this Court struck Amrhein's Reply Brief. Amrhein also filed a motion "to supplement this court record," which this Court construed as requesting, in part, a review of the trial court's order sustaining the contest to Appellant's inability to afford costs. *See* this Court's April 1, 2019 Order at 2. This Court affirmed the trial court's order sustaining the contest and ordered Amrhein to file a written verification by April 8, 2019 that she made arrangements to pay the reporter's fee. *Id.* Assuming Amrhein filed a verification by April 8, 2019 that she had made arrangements to pay the trial court reporter's fee, the Court would then allow for filing any amended briefs. *Id.* But Amrhein failed to file any verification by April 8, 2019. Instead, Amrhein filed a motion for "stay and abatement" on April 4, 2019, and a "motion to stay this appeal" on April 5, 2019. This Court denied both motions on May 24, 2019,

and determined that the Briefing in this appeal appeared complete. *See* this Court's May 24, 2019 Order.

Amrhein now seeks to delay this case another time by filing a notice of bankruptcy after her previous motion to abate was denied.

II. ARGUMENT

Notwithstanding the conclusory language in Amrhein's Notice of Bankruptcy that "this action is stayed, unless otherwise ordered by the Bankruptcy Court," this Court need not and should not stay this appeal.

It is well established that where, as here, the case or appeal is being brought *by the debtor*, a bankruptcy filing does not stay that case. *See Sommers v. Concepcion*, 20 S.W.3d 27, 34 (Tex. App.—Houston [14th Dist.] 2000, pet. denied) ("An automatic stay applies only to actions against the debtor."); *Greenspoint Palms, Ltd. v. Greenspoint Co.*, 795 S.W.2d 219, 220 (Tex. App.—Houston [14th Dist.] 1990, no pet.) ("On the afternoon before this case was set for submission, we received a suggestion of bankruptcy, indicating that an involuntary bankruptcy proceeding had been commenced that day against appellant. We find this appeal is not an action against the bankrupt entity; therefore, we believe that automatic stay provision of § 362 of the Bankruptcy Code is inapplicable and we proceed with the disposition of the appeal."); *Hammer v. Noelke*, No. 13-17-00223-CV, 2018 WL 6218087, at *2 (Tex. App.—Corpus Christi Nov. 29, 2018, no pet.) ("'[T]he automatic stay is inapplicable to suits by the bankrupt....' The stay does not prevent

a debtor from continuing to prosecute her own claims, and it does not prevent a defendant from protecting its interests against claims brought by the debtor.”); *see also Arnold v. Garlock, Inc.*, 278 F.3d 426, 436 (5th Cir. 2001) (“Section 362 is rarely, however, a valid basis on which to stay actions against non-debtors.”); *In re Horizon Women’s Care Prof. LLC*, 506 B.R. 553, 556 (Bankr. D. Colo. 2014) (“The converse, of course, is that § 362(a) does not stay proceedings that were originally brought by the debtor.”); *United States v. Comer*, No. 95-CV-10182-BC, 1997 WL 613400, at *4 (E.D. Mich. Sept. 24, 1997) (“The Seventh Circuit Court of Appeals stated that the automatic stay is inapplicable to suits initiated by the bankrupt-debtor.”).

It is Amrhein who filed the lawsuit against Bollinger, and it is Amrhein who is prosecuting this appeal. Based on the foregoing, there is no basis to conclude that a Chapter 7 bankruptcy filing has any impact on her ability to prosecute her claims. More importantly, a Chapter 7 bankruptcy, as shown above, has no impact on Bollinger’s ability to defend against Amrhein’s claims. To allow further delay in this case would prejudice Bollinger’s rights.

III. CONCLUSION

For the foregoing reasons, Appellees Lennie F. Bollinger and Wormington & Bollinger Law Firm respectfully request that this Court refuse to enter a stay of this appeal and enforce the current appellate deadlines.

Respectfully submitted,

COBB MARTINEZ WOODWARD PLLC

By: /s/ Katherine K. Elrich

KATHERINE K. ELRICH

State Bar No. 24007158

CARRIE JOHNSON PHANEUF

State Bar No. 24003790

1700 Pacific Avenue, Suite 3100

Dallas, Texas 75201

(214) 220-5206—Telephone

(214) 220-5256—Fax

**ATTORNEY LENNIE F. BOLLINGER, AND
WORMINGTON & BOLLINGER LAW FIRM**

CERTIFICATE OF SERVICE

I certify that the foregoing document was electronically filed with the Clerk of the Court using the electronic case filing system of the Court. I also certify that a true and correct copy of the foregoing was served via e-service on all counsel of record on the 1st day of July 2019.

**Via Electronic Service through
FileTime**

Darlene C. Amrhein
112 Winsley Circle
McKinney, Texas 75071
Winsley112@yahoo.com
Pro-se Appellant

And

Via Facsimile: 972-964-0120

Larry K. Hercules
Attorney at Law
1400 Preston Road, Suite 400
Plano, Texas 75093
Appellant's Bankruptcy Counsel

/s/ Katherine Elrich

Katherine Elrich